CUK-H05366-100-LP 2317.

THE

MADRAS LAW JOURNAL.

EDITORIAL COMMITTEE.

RAO BAHADUR K. V. KRISHNASWAMI AIYAR, B.A., B.L.
MR. T. M. KRISHNASWAMI AIYAR, B.A., B.L.
„ C. A. SESHAGIRI SASTRI, B.A., B.L.
„ B. V. VISWANATHA AIYAR, M.A., B.L.

OFFICIATING EDITOR.

MR. K. SANKARANARAYANAN, B.A., B.L.

REPORTERS.

MR. GANPAT RAI, B.A., LL.B. *Advocate, Supreme Court.*
„ S. V. VENUGOPALACHARI, B.A., B.L., *High Court.*
„ R. MATHRUBUTHAM, B.A., B.L. „

100

UNIVERSITY LIBRARY LAW COLLEGE

[1955] II M.L.J.
July—December

UNIVERSITY OF CALCUTTA
NOT TO BE REMOVED
DEPARTMENT OF LAW

PUBLISHED BY
MR. N. RAMARATNAM, M.A., B.L.
AND
PRINTED AT THE MADRAS LAW JOURNAL PRESS,
MYLAPORE, MADRAS 4.
[*All Rights Reserved.*]
1955

CONTENTS.

ARTICLES.

	Page.
The Companies Bill—A plea for amending certain clauses by A. Ramaiya, Advocate, Mathurai ..	15
A Critical Note on Order 21, Rule 89 of The Code of Civil Procedure ((Madras Amendment) by M. N. Krishnamoorthy, M.A., B.L., Advocate, Cuddalore ..	63
A Critical Note on *R.M. P.M. Ranganathan Chettiar* v. *Chinnalakshmi Achi*, (1955) 1 M.L.J. 260 by R. Santhanam Iyengar, Advocate, Namakkal	1
The Late Sir M. D. Devadoss ..	14
Enhancement of Small Cause Jurisdiction up to Rs. 2,000 by A. S. Kuppuswamy, Advocate, Tirunelveli ..	26
Enhancement of Small Cause Jurisdiction of Subordinate Judge up to Rs. 2,000 by M. Krishnamachari ..	44
Freedom of Speech *v.* Defamation of Public Servants by Paras Diwan, LL.M. ..	4
The Hindu Marriage Act, 1955 by S. Venkataraman ..	34
The Joint Committee on the Companies Bill: A Comment on the Major Amendments proposed by them by A. Ramaiya, Advocate, Mathurai ..	11
The Law Commission by R. S. Srinivasacharya, Advocate, Madras ..	30
Legal Education by R. S. Srinivasacharya, M.A., B.L., Advocate, Madras ..	50
(Madras Act XVI of 1951) increasing the Small Cause Jurisdiction of a Subordinate Judge beyond Rs. 1,000—A note on the validity of, by M. Narayana Rao, B.A., B.L., Pleader, Rajahmundry ..	38
Recruitment to The Judiciary by R. S. Srinivasacharya, M.A., B.L., Advocate, Madras ..	45
The Role of The Judiciary in Independent India by V. G. Ramachandran, M.A, B.L., (Author of Law of Contempt of Court and Law of Preventive Detention) ..	8
The Second Five-Year Plan and Nationalisation by C. S. Subramania Ayyar, Advocate, Madras ..	41
Small Cause Jurisdiction and Madras Act XVI of 1951 by T. S. Ramanathan, B.A., B.L., Advocate, Tenkasi ..	59
The Late Sri B. Somayya ..	61
Sri B. Somayya, My Master by S. Varadarajulu, District Magistrate (J.) ..	61
Sovereignty in The Indian Republic by V. G. Ramachandran, M.A., B.L. ((Author of The Law of Contempt and The Law of Preventive Detention) ..	23

PAGE.

The Validity of The Enhancement of the Limit of Small Cause Jurisdiction by Madras Act XVI of 1951 by S. Vaidyanathan, Advocate, Madras .. 27

Validity of Madras Act XVI of 1951. Increasing Small Cause Jurisdiction of Subordinate Judges beyond Rs. 1,000 by K. V. Venkataseshadri, M.A., B.L., Advocate, Cuddalore, N,T. .. 52

The Validity or otherwise of The Increase in Small Cause Jurisdiction beyond Rs. 1,000—A note by T. S. Ramanatha Ayyar, Advocate, Tenkasi .. 20

BOOK REVIEWS.

	Page.
The Bombay Rent Act by J. H. Dalal, B.A., LL.B., Advocate, High Court, Bombay (2nd Edn., 1955). Published by N. M. Tripathi, Ltd., Bombay. Price Rs. 12-8-0. Foreword by the Hon'ble Mr. Justice J. C. Smith, High Court, Bombay ..	56
Century Digest of Statutory Notifications (1854-1954). In three volumes by B. L. Goswamy, B.A., LL.B., P.C.S., with a Foreword by the Hon'ble Mr. Justice A. N. Bhandari, I.C.S., Chief Justice, Punjab High Court. Published by Jupiter Publications, Delhi. Price Rs. 25, per volume. Vol. I-A to Def. (1955) ..	28
Commentary on the Evidence Act (in two volumes) by V. B. Raju, M.A. I.C.S., District and Sessions Judge, Bombay, Vol. I (1955). Published by the Author. Price Rs. 32 per set	22
Expert Evidence (Medical and Non-medical) by Y. H. Rao, Advocate. Published by Criminal Law Publications, Gudur (Nellore Dt.). Price Rs. 17-8-0 ..	58
Hand-Book of Hindu Law by M. D. Manak (English edition). Published by Messrs. N. M. Tripathi, Ltd., Princess Street, Bombay. Price Rs. 8-12-0 (1955). ..	21
Hand-Book of Mercantile Law by E. Venkatesan, B.A., M.L., Advocate, Supreme Court and High Court, Guntur, with a Foreword by Hon'ble Mr. Justice Subba Rao, Chief Justice, High Court of Andhra. Third Edition (1955). Price Rs. 11 ..	58
The Hindu Marriage Act (XXV of 1955) by D. H. Chaudhari, B.SC., LL.B., Pleader, with a Foreword by the Hon'ble H. V. Pastakar, Law Minister, Government of India, Eastern Law House, Calcutta. Price Rs. 10 ..	56
Industrial Law Digest (1953-1954) by N. K. Khare and L. B. Bhide. Published by Messrs. N. M. Tripathi, Ltd., Princes Street, Bombay. Price Rs. 15 ..	21
Jurisprudence by M. J. Sethna, PH.D. (Bom.), Bar-at-Law. Published by Lakshmi Book Depot, Bombay-4. Price Rs. 10 ..	57
The Lawyer ..	55
Law relating to Joint Hindu Families and their Assessment by Prem Nath Chadha, B.A., LL.B. Published by Wadhwa & Co., Agra (1955). Price Rs. 10 ..	22
Law and Practice of Income-tax by Kanga and Palkivala, third edn., 1955. N. M. Tripathi Ltd., Bombay-2. Price Rs. 40 ..	55
The Madras Co-operative Societies Act (VI of 1932) with commentary by S. Rajagopalan, B.A., with a Foreword by J. C. Ryan, M.A., I.A.S., Registrar of Co-operative Societies, Madras, Published by V. S. N. Chari & Co., Nungambakkam, Madras-6. Price Rs. 8 (1954) ..	21

PAGE.

The Madras Hindu (Bigamy Prevention and Divorce) Act (VI of 1949) in Tamil by M. S. Parthasarathy Iyengar, B.A., B.L., Published by the Tamil All India Journal Office, Tiruvallur (1955). Price Re. 1 .. 21

Records of the Inter-Governmental Copy Right Conference, Published by The United Nations Educational Scientific and Cultural Organisation, 19, Avenue Kleber, Paris 16. Royal Size 415pp. Price $3.50; Rs. 21; Fr. 1000. Available at all National Distributors of Unesco. Publications M|s. Oriental Longmans Ltd., 36-A, Mount Road, Madras .. 53

Special Marriage Act (XLIII of 1954) by V. S. Kulkarni, Advocate, Bombay. Published by Law Book House, Laxmi Road, Poona-2. Price Rs. 6 (1955) .. 53

Studies in Muslim Law, Vol. I (Batil and Fasid Marriage) by Dr. N.U. A. Siddique, M.A., B.C.L. (Oxon) LL.D. (Dublin). Bar-at-Law, Dean of the Faculty of Law, Dacca University (1955). Price Rs. 15 .. 57

NOTES OF INDIAN CASES.

	PAGE.
Andhra Bank, Ltd. *v.* Narayana Rao, (1954) 2 M.L.J. 38 ..	9
Balasundara Mudaliar *v.* Muthuvenkatachala Mudaliar, (1954) 2 M.L.J. 141 ..	13
Commissioner for Hindu Religious Endowments *v.* Sri Lakshmindra Thirtha Swamiar, (1954) 1 M.L.J. 596 (S.C.) ..	7
Commissioner of Income-tax, Bombay *v.* Ogale Glass Works, Ltd., (1954) 2 M.L.J. 67: 1954 S.C.J. 522 (S.C.) ..	10
Hem Raj *v.* State of Ajmer, (1954) 1 M.L.J. 694 (S.C.) ..	6
Karuthayya *v.* Karuthayya, (1954) 1 M.L.J. 675 ..	1
Panachand Gandhi *v.* State of Bombay, (1954) 1 M.L.J. 718 (S.C.).	7
Sarma *v.* Satish Chandra, (1954) 1 M.L.J. 680 (S.C.) ..	4
Shyam Lal *v.* State of U.P., (1954) 1 M.L.J. 730 (S.C.) ..	8
State of Madras *v.* Baffaki Thangal, (1954) 2 M.L.J. 236 ..	16
Subbaraya Setty, *In re,* (1954) 1 M.L.J. 679 ..	2
Sultan Ahmed Rowther *v.* State of Madras, (1954) 2 M.L.J. 93 ..	12
Vithlani *v.* Meghji, (1954) 2 M.L.J. 202: (1954) S.C.J. 626 (S.C.) ..	15

CASES CITED IN THE NOTES OF INDIAN CASES.

PAGES.

Abdul Salam v. State, 1933 Cr. L.J. 1885 .. 6, 7
Adelaide Company v. Commonwealth, 67 C.L.R. 116, 124 .. 8
Avissa v. Kunhaikalanthan, (1948) 1 M.L.J. 194 .. 2
Aynan Muthirian, In re, 1928 Cr. Cases (Madras) 24 .. 3
Barrell v. Sabine, 1 Ver. 268: 23 E.R. 462 .. 14
Baxter v. Langley, 38 L.J. M.C. 5 .. 7
Bloyd v. United States, 116 U. S. 616 .. 4
Davis v. Beason, 133 U. S. 333, 342 .. 8
Dibbins v. Dibbins, L.R. (1896) 2 Ch. 348 .. 15
Din Bai v. Dominion of India, A.I.R. 1951 Bom. 72 .. 16
Duncan v. Cammell, Laird & Co., Ltd., L.R. (1942) A.C. 624 .. 16
Durga Prasad v. State, I.L.R. (1952) Nag. 376 .. 3
Entick v. Carrington, 19 State Trials, 1029 .. 4
Felix Gould v. United States, 255 U. S. 298 .. 5
Felix Hadley & Co. v. Hadley, L.R. (1898) 2 Ch. 680 .. 11
Fremont Weeks v. United States, 232 U.S. 383 .. 5
Hale v. Henkel, 201 U.S. 43 6
Isher Singh v. Nirmal Kaur, (1952) Cr.L.J. 298 .. 3
Jambu Chetty v. Palaniappa Chetty, (1903) I.L.R. 26 Mad. 526 .. 11
Jamshed Khodaram v. Bujorji Dhunjibhai, (1915) 30 M.L.J. 186: L.R. 43 I.A. 26: I.L.R. 40 Bom. 289 (P.C.) .. 14
Jogo Singh v. Emperor, (1919) 53 I.C. 820 .. 3
Joy v. Birch, (1836) 4 Cl. & Fin. 57: 7 E.R. 22 .. 14
Kauri Timber Company, Ltd. v. Commissioner of Taxes, L.R. (1913) A.C. 771 (P.C.) .. 12
Kemp v. Watt, (1846) 15 M. & W. 672: 153 E.R. 1020 .. 11
Kuthali Moothavar v. Kunharankutty, (1921) I.L.R. 44 Mad. 883 (P.C.) .. 1
Lake v. Dean, (1860) 28 Beav. 607 .. 2
I. M. Lall's case, (1948) F.L.J. 23: (1948) 2 M.L.J. 55: L.R. 75 I.A. 225 (P.C.) .. 8
I. M. Lall v. Secretary of State, A.I.R. 1944 Lah. 209 .. 16
Lennon v. Napper, (1802) 2 Sch. & Lef. 682 .. 14
Lord Advocate v. Lord Lovat, (1880) L.R. 5 A.C. 273, 288 .. 2
Lord Advocate v. Young, (1887) 12 A.C. 544 .. 2
Lyell v. Kennedy, (1887) L.R. 18 Q.B.D. 796, 813 .. 2
Maillard v. The Duke of Argyle, (1843) 6 Man. & G. 40: 134 E.R. 801 .. 11
Mahammad Amanulla Khan v. Badam Singh, (1889) I.L.R. 17 Cal. 137 (P.C.) .. 1
Mahomed Ali Khan v. Khaja Abdul Ghunny, (1883) I.L.R. 9 Cal. 744 (F.B.) .. 2
Mata Din v. Emperor, A.I.R. 1931 Oudh 166 .. 6
Mohanlal Hargovind v. Commissioner of Income-tax, C.P. & Berar, (1949) 2 M.L.J. 571: L.R. 76 I.A. 235: I.L.R. (1949) Nag. 892 (P.C.) .. 13
Mohima Chunder Mozoomdar v. Mohesh Chunder Neoghi, (1888) I.L.R. 16 Cal. 473 (P.C.) .. 1
Marshall v. Green, (1875) L.R. 1 C.P.D. 36 .. 12
Natesa Gramani v. Thangavelu Gramani, (1913) I.L.R. 38 Mad. 883 .. 13
Official Liquidators, Gorakpur Electric Supply Co., Ltd. v. Siemens (India), Ltd. I.L.R. (1940) All. 730 .. 10
Official Receiver, East Godavari v. Govindarajulu, I.L.R. (1940) Mad. 953: (1940) 2 M.L.J. 190 (F.B.) .. 1, 2
Palaniappa Chettiar v. Arunachellam Chetty, (1911) 21 M.L.J. 432 .. 11
Park Ward & Co., Ltd., In re, L.R. (1926) 1 Ch. 828 .. 9
Roberts v. Berry, (1853) 3 De. G. M. & Cr. 284: 43 E.R. 112 .. 13, 14
Robinson v. Read, (1829) 9 B. & C. 448: 109 E.R. 167 .. 11

PAGES.

Robinson *v.* State of South Australia, L.R. (1931) A.C. 704 (P.C.) .. 16
Ramalingam Pillai, *In re,* (1934) 67 M L.J. 293 .. 3
Ramanathan Chettiar *v.* Lakshmanan Chettiar, (1930) I.L.R. 54 Mad. 622: 61 M. L.J. 224 .. 2
Ramlal *v.* Official Liquidator, Benares Bank, I.L.R. (1942) All. 86, 98 .. 10
Rokhana Corporation *v.* Inland Revenue Commissioners, L.R. (1938) A.C. 380 .. 11
Romer and Haslam, *In re,* L.R. (1893) 2 Q.B. 286 .. 11

Samarapuri Chettiar *v.* Seetharama Chettiar, (1919) 37 M.L.J. 109: I.L.R. 42 Mad. 802 .. 15
Sardar Khan Sahib *v.* Athanulla, (1924) 47 M L.J. 926 .. 3
Satish Chandra Anand *v.* The Union of India, (1953) S.C.J. 323 (S.C.) .. 8
Satya Kinkar Ray *v.* Nikhil Chandra Jyotish Opadhyaya, A.I.R. 1951 Cal. 101 .. 6
Secretary of State for India *v.* Cellikani Rama Rao, (1916) I L.R. 31 M.L.J. 324: I.L.R. 39 Mad. 617 (P.C.) .. 1
Seeni Chettiar *v.* Santhanathan Chettiar, (1896) 6 M.L.J. 281: I.L.R. 20 Mad. 58 (F.B.) .. 13
Sheth Kahandas Narandas *v.* Dahiabhai, (1879) I.L.R. 3 Bom. 182 .. 15
Sriranga Chettiar *v.* Subramani Asari, A.I.R. 1927 Mad. 31 .. 3
Stedman *v.* Gooch, (1793) 1 Esp. 5: 170 E.R. 262 .. 10
Stickney *v.* Keeble, L.R. (1915) A.C. 386 .. 14

Tilley *v.* Thomas, L.R. (1868) 3 Ch.A. 61 .. 14
Tulsidas *v.* Industrial Bank, (1930) I.L.R. 54 Bom. 718 .. 10

Williams *v.* Williams, 1 Hagg Cons. 304 .. 6
In re Wiltshire Iron Co. *ex parte* Pearson, (1868) L.R. 3 Ch.A. 443 (C.A.) .. 9

// THE
MADRAS LAW JOURNAL.

II] JULY [1955

A CRITICAL NOTE ON RM. PM. RANGANATHAN CHETTIAR v. CHINNA LAKSHMI ACHI, ((1955) 1 M.L.J. 260).

By

R. SANTHANAM IYENGAR, *Advocate, Namakkal.*

This decision deals with a point of law, that frequently comes up for consideration. In this case, His Lordship Rajagopala Iyengar, J., had to consider whether a Court has power to compel a party to a suit to be examined by a doctor against his or her consent. His Lordship after holding that there is no statutory provision for making such an order and that section 151, Civil Procedure Code, could not be invoked either, for this purpose, observed that the Court might, however, draw an adverse inference against the party who refused to submit himself to medical examination. With great respect, it must be pointed out that there may be cases where it may not be possible to draw any such adverse inference against a party.

This decision, however, cuts no new ground. This question has already been considered in much the same way by Umamaheswaram, J., in *Sreeramamurthy* v. *Lakshmikantam & another*[1] and by Raghava Rao, J., *in Venkateswaralu* v. *Subbayya*[2] It does not appear that these two rulings were ever brought to the notice of Rajagopala Ayyangar, J., and he appears to have dealt with the point as though it is a self-evident proposition in a short judgment. That, however, makes no difference since the view taken in all these decisions is the same. But it is really unfortunate that an earlier decision of Satyanarayana Rao, J., on an identical question in *Mohamed Ibrahim Ummal* v. *Sheik Mohamad Marakayar*[3], was not brought to the notice of the learned Judges who decided those cases mentioned above, and it is a matter for consideration whether the view of the learned Judges taken in those decisions might not have been entirely different if their attention had been drawn to the ruling of Satyanarayana Rao, J., wherein His Lordship after an exhaustive analysis of both English and Indian Law on the subject has reached a conclusion that the Court has the necessary inherent power under section 151, Civil Procedure Code, to compel a party to undergo medical examination.

The ruling of Satyanarayana Rao, J., may, at first, appear to be distinguishable on the ground that the question there was considered as one arising under Order

1. (1955) Andhra W.R. 13.
2. (1951) 1 M.L.J. 580.
3. (1948) 2 M.L.J. 277.

32, rule 15, Civil Procedure Code, which empowers the Court to hold an enquiry as to the unsoundness of mind of a party, who has not already been adjudged to be of unsound mind, and therefore, it may be urged, that it has nothing to do, with a case where the question for consideration is whether section 151, Civil Procedure Code, could be invoked in the absence of any statutory provision like Order 32, rule 15, Civil Procedure Code. But a close examination of the facts of the case will clearly reveal that this distinction is not correct, and it will be evident from the facts of the case that his decision rests on much broader grounds and is not confined to Order 32, rule 15 alone.

In the case before Satyanarayana Rao, J., the plaintiff through her next friend brought an action against her step brother and her husband for a declaration that certain transactions were void on the ground that at all material times the plaintiff was of unsound mind and was not in a position to understand the effect of the transactions impeached. The defendants questioned the right of the next friend to institute the suit on behalf of the plaintiff on the ground that she was not of unsound mind. The attack on the validity of the transactions and the right of the next friend to institute the suit were both founded practically on the same set of allegations and both depended for decision on the only question of fact, *viz.*, whether the plaintiff was of unsound mind or not. Not being content with the medical opinion obtained by the plaintiff and the evidence taken on commission at the instance of the plaintiff of the doctors who had examined her, the 1st defendant took out a separate application for the appointment of a competent medical expert as commissioner to examine the plaintiff and to report about her mental condition. This application was opposed by the plaintiff but the Court over-ruled the objection and granted the application, and ordered the plaintiff to appear before the medical expert. In revision against this order, the plaintiff raised a contention before Satyanarayana Rao, J., that though the Court might have the power and jurisdiction to direct a party to be present in Court, examine such party and for that purpose summon an expert witness to assist it in reaching a satisfactory conclusion on the question in issue yet it was not open to a Court to compel a party to undergo medical examination. This contention did not find favour with His Lordship and in reaching the conclusion which he did His Lordship felt himself free to travel outside the provisions of Order 32, rule 15, Civil Procedure Code and to seek support for his views from other provisions of Civil Procedure Code and rested his conclusions on general principles mainly relying on section 151, Civil Procedure Code. According to His Lordship the power to resort to medical assistance does not rest on any statutory rule but is inherent in every Court. In this connection it is pertinent to refer to the following observations of His Lordship at page 280 :—

" Under this rule it would be seen that the Court has the right and jurisdiction to enquire into the question in a case, where a person was not already adjudged to be of unsound mind, whether the person was really of unsound mind or not. That this jurisdiction does not rest on any statutory rule but is part of the inherent jurisdiction of the Court is clear from the decision of *Lee* v. *Ryder*[1]."

It must be observed that the question before Satyanarayana Rao, J., was one of fact arising not only under but also independent of Order 32, rule 15, Civil Procedure Code. This will be clear from the facts of the case as well as from the following observations of His Lordship at page 281 :—

1. (1822) 6 Madd. 294: 56 E.R. 1103.

"In the present case, the question arises not only under Order 32, rule 15 but also as substantial issue in the suit as the basis of attack levelled against the impugned transactions is the same. The Court has therefore ample jurisdiction to enquire into the question whether the plaintiff was really by reason of unsoundness of mind or mental infirmity incapable of protecting her interest or not. For this purpose as pointed out by the Vice-Chancellor in *Lee* v. *Ryder*[1] it is open to seek medical assistance."

After examining the rules of the Supreme Court and some English and Indian decisions in regard to the powers of the Court to summon expert witnesses to assist it, His Lordship concluded the question in clear and unmistakable terms in the following words at page 281 :—

"The Court has ample power under Order 16, rule 14, Civil Procedure Code to examine not only the parties and the witnesses summoned by them but also other persons whom the Court thinks are necessary. If so much is conceded or established the only point is, has the Court no jurisdiction to make that power effective? It is said that an expert may be examined but the expert should not have the necessary data to form his opinion by examining the plaintiff. I think the contention so stated reduces the power of the Court to a mockery. If a jurisdiction exists in a Court, the Court has always the right and duty to exercise that power as effectively as possible. It is an inherent power of the Court to make its power effective even though there is no specific provision in the Code or elsewhere to cover that particular power. It is to cover such cases, I think, section 151, Civil Procedure Code was enacted."

Therefore, it must be clear from the foregoing discussion that Order 32, rule 15, Civil Procedure Code does not by itself empower a Court to compel a party to undergo medical examination, but such a power could be traced only to the provisions of section 151, Civil Procedure Code. If so much is granted, it must necessarily follow that whenever a question, which the Court has the power and jurisdiction to decide as an issue of fact on the merits of the case, arises for consideration apart from any statutory provision, the Court is entitled to call in aid section 151, Civil Procedure Code and compel a party to submit himself to medical examination, if the justice of the case so requires it. This much follows from the judgment of Satyanarayana Rao, J. If this is the correct view to take on the point at issue, then with all respect it is submitted, the decisions of Rajagopala Ayyangar, J., Umamaheswaram, J., and Raghava Rao, J., would all seem to require some reconsideration.

There is another aspect of the case which calls for further investigation. The decision of Satyanarayana Rao, J., was rendered some time prior to the coming into force of the Constitution. Article 21 of the Constitution enacts that "no person shall be deprived of his life or personal liberty except according to procedure established by law". The question is whether the law as laid down by Satyanarayana Rao, J., is repugnant to Article 21 of the Constitution. This aspect of the case has no doubt been noticed by Umamaheswaram, J., but it does not appear to have been considered in the other two decisions. However, until the question is authoritatively settled by a decision of a Bench, there is much to be said in favour of the view taken by Satyanarayana Rao, J.

---

1. (1822) 6 Madd. 294 : 56 E.R. 1103.

FREEDOM OF SPEECH v. DEFAMATION OF PUBLIC SERVANTS.

By

PARAS DIWAN, LL.M.

FREEDOM OF CRITICISM.

"Down with the bureaucracy" was one of the main slogans of our freedom movement; the struggle for freedom was launched not only against the British Raj but also against those who ran its colonial machinery, the bureaucrats. Therefore, along with the British Government the public servants were also the target of severe public criticism.

It was one of the fundamental demands of our freedom movement that we should have freedom of criticism; freedom of criticism implies freedom of speaking. To crush the criticism of the Government and of those who carried the administration, the most ruthless measures of suppression were employed by the British Government.

In the post-freedom era the people very legitimately thought that the tyranny of bureaucracy would come to an end, and some thought as though by a miracle. And, probably, all that is expected of a public servant has not been achieved. The system remains the same, the nature of the service remains the same, and the personnel of the service almost remain the same.

The fundamental democratic right to freedom of speech has now been enshrined in our Constitution.

The public in exercise of its right to freedom of speech criticises the administration. Sometimes the criticism runs amock. The administration has become very conscious of the criticism. It feels that the criticism has to be harnessed.

In all democratic countries, a question has always arisen: How far can this right to freedom of speech go? Or, can this freedom be absolute? Or, can a citizen indulge in all sorts of speech making, irrespective of the contents of the speech and irrespective of its effect?

RIGHT TO REPUTATION.

From the very dawn of democracy, it has been recognized that freedom of speech cannot be absolute, it cannot mean freedom to say anything or everything. We all know that many crimes, such as sedition, criminal intimidation, etc., are committed by spoken words. Obviously, the freedom of speech has never extended that far as to protect them. Sometimes, spoken words may be used in an offensive manner, they may be insulting, they may be abusive, they may injure somebody's reputation, in short they may be defamatory. The freedom of speech has not protected them, either, though in political cases its protection is still invoked.

A balance has always been struck between the individual interest in the freedom of speech and the social interest in limiting it. This balance has been achieved differently in different cases. In some cases, spoken words have been interpreted to mean criminal offence, sedition is one of the examples. In other cases they have given cause to civil offence, the obvious example is slander. Thus, the freedom of speech has been limited. Sometimes, the freedom of speech is controlled, limited and curtailed by special measures, either legislative or executive. Special measures are taken recourse to only in the times of crisis.

Thus, just as an individual has a right to freedom of speech, similarly he has a right to reputation; if freedom of speech infringes the right to reputation, it would

be an offence, an offence for the redress of which the injured party can bring a legal action ; this action may either be a civil action or criminal proceedings.

This falls under the law of defamation.

Just as an individual has a right to reputation, so has the public servant, though a citizen has greater reasons of criticising the public servant than an ordinary citizen. But then, it is said, the public servant, since he carries the administration, needs special protection.

And before democracies this has been a vital question how to protect the right to reputation without infringing the freedom of speech : the real test of democracies is how rightly this is achieved.

Democracies have endeavoured to achieve a balance between the two:

The Government of India has brought a measure, the Code of Criminal Procedure (Amendment) Bill, which *inter alia* proposes to harness the public criticism and give the public servant special protection. This measure has been passed by the House of People.

LAW OF DEFAMATION.

It is an old adage that a good name is far better than the riches of the whole world; and in most cases suffering caused by loss of reputation and character is far more than the suffering caused by physical pain or by loss of property. It is recognized under our law that every individual has a right to his reputation. A statement, written or oral, or expressed by signs or visible representation, which exposes a person to hatred, contempt, ridicule, or injure him in his trade, business, profession, calling or office, or which leads to his being avoided in society, is defamation.

The essentials of defamation are : (*a*) there must be a defamatory statement, (*b*) the statement should refer to the plaintiff, and (*c*) the statement must be published, *i.e.*, it must be communicated to some person other than the plaintiff.

Under section 499 of the Indian Penal Code, a person who makes or publishes any imputation by words, spoken or written, or by signs or visible representation, as caricatures or cartoons, concerning any person, would be committing the criminal offence of defamation ; it is also necessary that such an imputation should be made with the intention or with knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.

When the defamatory statement is in writing, or in some other permanent form, it is technically known as libel : when it is made orally it is known as slander. Defamation is both a criminal and civil offence.

The English law makes a distinction between libel and slander : the explanation of this distinction is purely historical and recently it has been under heavy fire. Indian Law makes no distinction between these two. Under the Indian Law there is also no substantial distinction between the criminal offence of defamation and the civil wrong of dafamation. The difference is in the proceedings and in the result of proceedings. In civil proceedings of defamation only damages can be claimed, while in the criminal proceedings of defamation, the offender may be sent to jail and may also be fined.

Since defamation is both criminal and civil offence, the person concerned has the option of bringing either a civil suit or a criminal suit. If he brings a criminal suit, the offender may be punished with simple imprisonment which may extend to

two years or with fine or with both. If he brings a civil suit he can claim damages. The quantum of damages varies with each individual case; it depends upon the nature and character of defamation, the extent of its circulation, the position in life of the parties and other circumstances attending the case.

In a suit of defamation, if the defendant can prove that the statement was true, that it was made in the nature of fair and *bona fide* comments on matters of public interest or that it was privileged statement, then he would be exonerated of the offence.

Democratic Duty of Criticism.

It has been seen above that every citizen has a right to freedom of speech and this right is mostly exercised in criticising the Government, its administration and the public servant. Freedom of speech is a very potent weapon in the hands of opposition and without the freedom of speech, we all know, the functioning of democracy is impossible. In democracies, it is not merely a right, not merely a privilege of the opposition to criticise the government but it is also its duty : A duty and a responsibility of the opposition. If opposition fails to perform this duty, it is considered to be the failure of democracy. By criticising, directly or indirectly, it influences the government and acts as a check on the arbitrary exercise of power of government. In all demcracies the opposition performs this duty. This is done through the press and platform, from inside and outside of the Parliament.

Since such is the importance of criticism in democracy, naturally enough its protection is very necessary. Constitution of every democratic government provides this protection. An exception to section 499, Indian Penal Code provides that it is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct. Therefore, a person making the conduct of a public servant subject of his comment for public good cannot be condemned for defamation, provided that the comments were made honestly or that the maker honestly believed that the facts stated were correct and that there was neither any wilful misstatement of facts nor any misstatement of fact to his knowledge, and provided that the corrupt or dishonest motives were not imputed to a public servant, except in so far as such imputations were warranted by the facts.

Defamation Proceedings.

Under the Criminal Procedure Code, defamation is a non-cognizable offence, that is, an action against the offender can be brought only upon the complaint of the aggrieved party ; the police cannot lodge the proceedings, even if it wishes to do so. If the aggrieved party, be he the citizen or the public servant, does not want to bring an action nothing can be done. The defamation proceedings are rather cumbersome....Most people are reluctant to bring defamation proceedings for the reason that in the cross-examination of the complainant, the defence can put up questions leading to the proof that the complainant has no reputation to lose ; consequently the defamatory statement of the accused is no offence. Some High Courts have taken the view that if the reputation of the complainant has gone so low that it cannot go lower than what it is by the publication of fresh defamatory statement, no action can succeed. The Patna High Court has dissented from this view.

It is seen that the public servants refrain from lodging the complaint even if they are defamed profusely. The Government wants that police should have the power to bring the proceeding against the offender.

THE PROPOSED AMENDMENT.

In the 'Statement of Objects and Reasons' of the Bill, the Government has thus expressed itself: "Often grossly improper, unfounded and defamatory allegations and charges are made against public servants in regard to their actions in the discharge of their official duties. It is desirable, in the public interest, that enquiries should be made into such charges. Therefore, such cases are being made cognizable so that they may be brought before a Court by the police after proper investigation. Such cases are being made triable exclusively by a Court of Session. Offences under sections 162-164 of the Indian Penal Code (which deal with taking illegal gratification to influence or to exercise personal influence with a public servant or to the abetment of both these offences) have been made cognizable."

Thus the amendment proposed to lay down:

(*a*) the offence of defamation of the President of the Union, the Governor or Rajpramukh of a State or a Minister shall be a cognizable offence;

(*b*) the offences under sections 162, 163 and 164 of the Indian Penal Code shall be cognizable offences.

Probably no other measure has suffered such a severe criticism in recent times than this amendment of the Criminal Procedure Code. In deference to the criticism of the public the Government has accepted an amendment, under which only libel has been made a cognizable offence. Even after this amendment in the final reading of the Bill opposition members continued to criticise the Bill.

After listing some of the improvements of the Criminal Procedure Code Bill, Shri N.C. Chatterjee speaking from the floor of the Lok Sabha said:

"There were many black-spots still remaining in the Bill; the blackest among them was the defamation clause, which created a special privileged category for Ministers and public servants. After what has happened, namely, the omission of slander from its purview, I feel, the Indian press will be justified in thinking that Dr. Katju's real aim was to strike at the opposition Press and gag it."

Mr. Chatterjee speaking about the effect of the amendment said that "whereas a member making a slanderous speech against a minister at a public meeting would go scotfree, a poor rag of a newspaper with a circulation of 250 copies saying something against some ministers or public servant would be punished."

Similarly, on December 9, 1954, the Deputy Leader of the Communist group, Mr. Mukerjee said from the floor of the Parliament: The law relating to defamation militates against the freedom of the Press, but the Home Minister has specialized in attacks on the Press over and over again by legislation and other methods.

CONCLUSION.

In our submission what is needed is not a reform in the procedural law but in the substantive law. The view of the Patna High Court should be given legislative recognition. It should be laid down that the character of a person can never go so low that there cannot be any fresh defamation. It is submitted that if that is

done it would be sufficient. The present amendment will not even be able to achieve the aim of the Government; even after the amendment the defence will have the right to adduce evidence leading to the proof that the aggrieved party has no character to lose.

It would simply mean giving the police one more pretext to harass the public.

Thus, it is submitted that it would be much better if this provision is deleted altogether. The Lok Sabha has already excluded slander from the list of cognizable offences. It is hoped that the Rajya Sabha will also exclude the libel from the purview of the clause. If the Government feels that the public in making the criticism of the public servant is exceeding the limits, it can administratively ask the public servant to lodge the complaint in a Court of law. It may give all possible legal assistance to the public servant; it may even fight out the case for him. But making slander or libel a cognizable offence would mean going against the established fundamental principle of democracy, the freedom of expression which would naturally be thwarted by the amendment.

THE ROLE OF THE JUDICIARY IN INDEPENDENT INDIA.

By

V. G. RAMACHANDRAN, M.A., B.L.,

[Author of *Law of Contempt of Court* and *Law of Preventive Detention*].

It is a trite saying that the visible symbol of sovereignty is in a country's independent Courts of Justice while the disappearance of that symbol marks the end of the rule of law heralding the jungle state. To be frank, a civilized state exalts itself to the extent it exalts the position of the judiciary of the land. The body politic must needs develop a sense of legalism *i.e.*, "a general willingness to yield to the authority of law Courts." In Dicey's words, a Federal system (as the Republic of India) can flourish only among communities imbued with a legal spirit and trained to reverence the law. It is therefore regrettable that there is a prevalent fashion even among educated gentry of political parties to decry even the interpretative jurisdiction of Courts of law and to hail their own conceptions of what is good for the country as pearls of wisdom. If there is one bulwark that guards the freedom of the average citizen it is the law Court. Courts of justice are even more important than even the military to guard the freedom of the country and of the individual. Even the executive derive their strength from an adherence to the rule of law. Even the supreme law making Parliament of the land exalts itself when it respects by convention the judicial pronouncements of the Supreme Court of the land in their interpretative jurisdiction. To set at naught a judicial verdict by an Act of Parliament is not always healthy or wise. Dicey pithily puts it 'yet any nation who cannot acquiesce in the finality of even possibly mistaken judgment is hardly fit to form part of a federal state.' The latter day tendency of prohibiting certain matters from being justiciable is 'unfederal' and suicidal of all democratic principles. The more the people resort to Courts the more does it indicate that the rule of law is gaining hold. It is therefore best that the executive, the party in power, and the people realized that federalism means legalism, realize also that the judge must be deemed to be not only the guardian of the rights of the people and

of the state but that at any given moment they must be deemed in the words of Dicey masters of the Constitution. As Berridale Keith would put it, there can be only three limiting principles to guide us : (1) the Judicial decisions should be upon fixed principles already established. (2) Legislation must favour the limitation of the executive and judicial power to deal arbitrarily with individual rights. (3) The Government should jealously respect its legal limitations.

Therefore it may be urged that respect for the Constitution, for the law of the land, for the rule of law and for Courts of justice is the only pivot round which the Indian Federal Democracy can grow into its full stature.

It is with these settled principles that the Constitution of India has envisaged the Supreme Court of India as the one unifying, life giving apex of justice in the Judicial structure of Federal India. The position of the Supreme Court of India is peculiarly adopted to the conditions in India. The American Supreme Court is not the final Court of appeal in all matters ; it is the interpreter of the Constitution but it cannot impose on State Courts a uniform interpretation of the general law. America has a hierarchy of Federal and State Courts each applying the Federal and State laws respectively. In Australia while the dual system of Courts is possible under parliamentary sanction the latter has been chary in according such sanction. The Australian High Court is a general Court of appeal, and is not only an interpreter of the Constitution but the interpreter of the general law of Australia. The Constitution of India permits new Courts to administer Union laws, apart from the existing Supreme Court but this power is to be sparingly used. The Supreme Court lays down not only the law of the Constitution but also the general law. It is also the Supreme general Court of appeal. The scheme is to herald uniformity and centralization of all laws throughout the territory of the Republic. The Supreme Court has also original jurisdiction over disputes between State and State, between Union and States and between individual and the State. In so far as the guaranteed fundamental rights are concerned, the Supreme Court has the special writ jurisdiction. The position of the High Courts in the various states deriving as they do their powers. under Letters Patent and the Constitution of India, is sacrosanct, both in its original, special and appellate jurisdiction. The powers of the High Courts in their special jurisdiction as to writs is wider than that of the Supreme Court under article 226. As laid down in *Election Commission, India* v. *Saka Venkata Rao*[1] "The framers of the constitution having decided to provide for certain safeguards for the people in the set up which they call fundamental rights, evidently thought it necessary to provide also a quick and inexpensive remedy for the enforcement of such rights, and finding that the prerogative writs which the Courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition were peculiarly suited for the purpose, they conferred in the states' sphere new and wide powers on the High Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights the power to issue directions, etc., 'for any other purpose' being also included with a view apparently to place all the High Courts in the country in the somewhat the same position as the Courts of King's Bench in England." We may mention what Monarchical England cherishes, Democratic India cannot with any grace spurn by whittling down the special powers of the High Court. The amend-

1. (1953) 1 M.L.J. 702 : (1953) S.C.J. 293 (S.C.).

NOT TO BE REMOVED

ment of the Constitution in this direction is hardly to be commended as in the best interests of the people and the State.

We may boast in India that while we imbibed the best traditions of English jurisprudence, our Courts of justice have given eloquent testimony to the juristic excellence and talent richly available in our country. Ancient Dharma of our land had got enriched by the later incursion of English jurisprudence. While our Courts and our jurists have earned the approbation of world opinion it is somewhat saddening that there are certain groups in our land inspired by power politics who envy the exalted position of the judiciary. They do so not knowing that it is suicidal even for them, to whittle down Courts' powers. As the Hon'ble the Chief Justice Mr. Patanjali Sastri stated in *State of Madras* v. *V.G. Row*[1]. "What is sometimes overlooked is that our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution unlike in America where the Supreme Court has assumed extensive powers, of reviewing legislative Acts under cover of the wider interpreted 'Due Process' clause in the Fifth and Fourteenth Amendments. If then, the Courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in the discharge of duty plainly laid upon them by the Constitution. This is especially true as regards "the fundamental rights as to which this Court has been assigned the role of a sentinel on the '*qui vive*'. While the Court naturally attaches great weight to legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute. We have ventured on these obvious remarks because it appears to have been suggested in certain quarters that the Courts in the new set up are out to seek clashes with the legislatures in the country." In a Calcutta case[2], their Lordships of the High Court put it more forcibly—"It has always been the tradition of this Court to stand between the subject and any encroachment of his liberty by the executive or any of the authorities however high....Amidst the strident clamours of political strife, and the tumult of the clash of conflicting classes we must remain impartial. This Court is no respecter of persons and its endeavour must be to ensure that above this clamour and tumult the strong calm voice of Justice shall always be heard—*Fiat Justitia ruat coelun.*"

Such is the tradition of our judges in Independent India. Their role in the emancipation of India into a pre-eminent Federal Democracy of the world is indeed worthy of the highest judicial traditions. Those are pigmies who do not see the need for preserving, fostering and exalting such a magnificent judicial set up in Republic India. These pigmies are the traitors of the nation. Public opinion should assert itself and put these pigmies in their proper places so as to facilitate the heralding of a full blown Federal State with the judiciary, the legislature and the executive all working harmoniously in their respective spheres within the three limitations we had set out above.

———

1. (1952) 2 M.L.J. 135 : (1952) S.C.J. 253 : (1952) S.C.R. 597.

2. *Sunil Kumar* v. *W.B. Govt.*, A.I.R. 1950 Cal. 274.